

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE L. THURMAN and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 02-166; Submitted on the Record;
Issued November 25, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant established that he developed cancer of the paranasal sinuses in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On October 26, 2000 appellant, then a 66-year-old former jambreaker, filed a notice of occupational disease, alleging that he developed cancer of the paranasal sinuses, causally related to his employment. On the reverse of the form, appellant's former supervisor indicated that appellant first sought medical attention on August 23, 1999, the same day appellant stopped work. Appellant's supervisor also indicated that appellant was terminated on September 30, 1999.

In support of his claim, appellant submitted medical billing statements dated June 22, August 21, September 6 and 28, 2000. Appellant also submitted a medicare summary notice dated September 8, 2000. Appellant also submitted an employing establishment medical information form signed by Dr. Ben Bassichis, dated March 31, 2000. Dr. Bassichis diagnosed appellant's condition as squamous cell carcinoma of the left nasal cavity.

In a November 22, 2000 letter, the Office advised appellant of the factual and medical evidence needed to determine whether he was eligible for benefits under the Federal Employees' Compensation Act.¹ In particular, appellant was asked to provide a comprehensive medical report and a physician's opinion, with medical reasons for such opinion, as to how appellant's working conditions caused or aggravated the claimed injury.

¹ 5 U.S.C. §§ 8101-8103.

By decision dated January 29, 2001, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant's cancer of the paranasal sinuses was caused by employment factors.

By letter dated June 24, 2001, appellant requested reconsideration of the Office's January 29, 2001 decision. Appellant also submitted Veterans Administration Form 10-1000, discharge summary, dated December 1, 1999, following treatment for cancer of the paranasal sinuses. While this summary noted the diagnosis of cancer, it did not address its cause.

By decision dated July 16, 2001, the Office denied reconsideration of its January 29, 2001 decision on the grounds that appellant neither raised substantive legal questions nor included new or relevant evidence and was not sufficient to warrant a merit review of the January 29, 2001 decision.

The Board finds that appellant has not met his burden of proof in establishing that he sustained cancer of the paranasal sinuses in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed⁶ or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁷

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.⁸ Rationalized medical opinion evidence is medical evidence which

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ *See John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Walter D. Morehead*, 31 ECAB 188, 194 (1979); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

⁶ *See Georgia R. Cameron*, 4 ECAB 311, 312 (1951); *Arthur C. Hamer*, 1 ECAB 62, 64 (1947).

⁷ *See generally Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁸ *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁹

In the instant case, appellant has attributed the occurrence of his cancer to his federal employment. The medical evidence submitted by appellant, however, is not sufficient to establish a causal relationship between the claimed condition and his federal employment. As noted above, the medical evidence must contain an opinion with supporting rationale. Appellant submitted a medical information form signed by Dr. Bassichis, in which the doctor found that appellant did have cancer of the nasal cavity, but did not address the causation of the disease. Since Dr. Bassichis did not provide a medical rationale explaining why or how appellant's cancer was contracted while in the performance of his assigned duties, his report is insufficient to establish appellant's claim.

As appellant has failed to submit a rationalized medical report based on a complete factual and medical background explaining how his cancer was contracted while in the performance of his federal employment, the Office properly denied his claim.

The Board further finds that the Office did not abuse its discretion in refusing to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a).

Section 10.606(b)(2) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a specific point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.¹⁰ Section 10.608(b) provides that when an application for review of the merits of a claim which does not meet at least one of these three requirements the Office will deny the application for review without review of the merits of the claim.¹¹

In his request for reconsideration, the only additional evidence appellant submitted was a VA hospital discharge form. While the discharge form noted that appellant was treated for cancer of the paranasal sinuses, it did not address the causation of appellant's disease. Further, appellant did not specify any erroneous application of law or advance a point of law or fact not previously considered by the Office. As the issue in this case is medical in nature, the submission of new medical evidence addressing whether employment factors caused or aggravated the claimed condition was necessary to require the Office to reopen the claim for a merit review.

⁹ See *James Mack*, 43 ECAB 321 (1991).

¹⁰ 20 C.F.R. § 10.606(b)(2) (1999).

¹¹ 20 C.F.R. § 10.608(b) (1999).

Consequently, appellant has not established that the Office abused its discretion in its July 16, 2001 decision by refusing to reopen his case for merit review under 5 U.S.C. § 8128(2).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated July 16 and January 29, 2001 are hereby affirmed.

Dated, Washington, DC
November 25, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member